

48A C.J.S. Judges § 234

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

A. In General

§ 234. Proceedings in which claim of disqualification available—Contempt proceedings

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  39

Though there are exceptions, ordinarily, a judge may be disqualified in a proceeding in contempt.

Although the necessities of a case may require the judge who witnessed the contemptuous conduct to preside at the hearing,¹ ordinarily, a judge may be disqualified in a proceeding in contempt.² Even where disqualification is allowed, however, the facts of the contempt case may not require or warrant the disqualification of a judge.³ When a court defers consideration of contempt until the conclusion of the trial, another judge must consider the charges.⁴

A "constructive" or "indirect" contempt arises from an act outside the immediate presence of the court which tends to degrade or make impotent the authority of the court or to impede or embarrass the administration of justice.⁵ There is authority that due process requires a trial on a charge of indirect constructive criminal contempt be before a judge other than the accuser, as indirect contempt is not committed under such circumstances that a court knows of all the facts constituting

the offense, and the accusing judge, who believes the conduct to be contemptuous, may be tempted to forget that proof beyond a reasonable doubt is required for a conviction.⁶ However, there is also authority that since indirect contempt is based on the disobedience of any process or order of the court, the judge of record is most familiar with the circumstances surrounding the issuance of said process or order, and the contempt proceeding is most appropriately before such judge as the trier of fact.⁷ Where the trial judge has substantial personal involvement in the prosecution, the accused contemnor must be tried by another judge.⁸

Direct criminal contempt.

A direct criminal contempt occurring in the presence of a trial judge may be punished immediately and summarily and, under such circumstances, the trial judge need not disqualify him- or herself⁹ unless the judge has become directly and personally embroiled.¹⁰ When a judge becomes embroiled in a "running controversy" with an individual being held in contempt, it becomes necessary for that judge to recuse him- or herself and permit another judge to adjudicate the issue of contempt.¹¹ Not every courtroom confrontation between a trial judge and a contemnor rises to the level of "embroilment," however, such as requires a hearing before a different judge rather than summary contempt proceedings.¹² Thus, charges of contempt involving personal insults are not always required to be tried before another judge at a later time.¹³ Primary considerations in the determination of whether a judge who cited a party for contempt should disqualify him- or herself from a direct contempt hearing is the extent to which a judge's conduct is integrated in the contempt and whether the contempt mandates immediate action.¹⁴ In deciding whether a trial judge is required to recuse him- or herself in a contempt proceeding due to a personal embroilment, a court must appraise both the conduct of the contemnor and the reaction of the judge.¹⁵ While personal embroilment is a more likely reaction when the contemnor has mounted a personal attack on the judge, it may also be found in the character of the judge's response if the judge has become visibly involved in running the controversy with the contemnor.¹⁶ Further, in determining whether contempt charges should be heard by a judge other than the one who initiated the proceeding, the appropriate question is not only whether there is actual bias on the judge's part but also whether there is such likelihood of bias, or appearance of bias, that the judge is unable to hold a balance between vindicating the interests of the court and the interests of the accused.¹⁷ Judicial recusal is necessary in a direct contempt proceeding only in the unusual case in which the apparent effect of a contemnor's conduct on the judge against whom the contemptuous conduct was levied indicates that the judge's impartiality or objectivity reasonably may be called into question.¹⁸

Federal rules of criminal procedure.

A federal rule of criminal procedure provides that if the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless the defendant consents.¹⁹ However, such rule does not contain a provision for mandatory disqualification.²⁰

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Footnotes

- 1 Idaho—*Matter of Williams*, 120 Idaho 473, 817 P.2d 139 (1991).
- 2 Ga.—*In re Siemon*, 264 Ga. 641, 449 S.E.2d 832 (1994).
- 3 Mass.—*Fay v. Com.*, 379 Mass. 498, 399 N.E.2d 11 (1980).
- Wyo.—*Skinner v. State*, 838 P.2d 715 (Wyo. 1992).
- 4 Mich.—*In re Contempt of Henry*, 282 Mich. App. 656, 765 N.W.2d 44 (2009).
- 5 C.J.S., Contempt § 10.
- 6 Haw.—*Evans v. Takao*, 74 Haw. 267, 842 P.2d 255 (1992).
- 7 Okla.—*Pittman v. State*, 1986 OK CR 59, 718 P.2d 366 (Okla. Crim. App. 1986).
- 8 Miss.—*In re McDonald*, 98 So. 3d 1040 (Miss. 2012).
- 9 Ark.—*Johnson v. Johnson*, 343 Ark. 186, 33 S.W.3d 492 (2000).
- 10 Miss.—*Terry v. State*, 718 So. 2d 1097 (Miss. 1998).
- N.H.—*State v. Martina*, 135 N.H. 111, 600 A.2d 132 (1991).
- As to criminal proceeding as proceeding in which claim of disqualification is available, see § 233.
- 11 Colo.—*People v. Jones*, 262 P.3d 982 (Colo. App. 2011).
- 12 Me.—*State v. Campbell*, 497 A.2d 467 (Me. 1985).
- 13 Vt.—*State v. Allen*, 145 Vt. 593, 496 A.2d 168 (1985).
- 14 Okla.—*Zeigler v. State*, 1991 OK CR 25, 806 P.2d 1131 (Okla. Crim. App. 1991).
- 15 Conn.—*Banks v. Thomas*, 241 Conn. 569, 698 A.2d 268 (1997).
- 16 Conn.—*Banks v. Thomas*, 241 Conn. 569, 698 A.2d 268 (1997).
- 17 Tenn.—*Black v. Blount*, 938 S.W.2d 394 (Tenn. 1996).
- 18 Conn.—*Banks v. Thomas*, 241 Conn. 569, 698 A.2d 268 (1997).
- Haw.—*Evans v. Takao*, 74 Haw. 267, 842 P.2d 255 (1992).

Disqualification not required

The trial judge did not become personally embroiled in the contemnor's verbal attack on her in the courtroom during a habeas proceeding, and thus, the judge was not required to disqualify herself from sitting in judgment on the criminal contempt; the judge maintained her professional demeanor at all times and did not depart from her role as the judicial authority even when she was the target of the contemnor's profane outburst.

Conn.—*Hargrove v. Superior Court of Judicial Dist. of Tolland at Rockville*, 111 Conn. App. 452, 959 A.2d 626 (2008).

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Fed. R. Crim. P. 42(a)(3).

As to consent, see §§ 243, 244.

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U.S.—*Goldfine v. U.S.*, 268 F.2d 941 (1st Cir. 1959).

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